

§ 44.6695-1

and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78457, Dec. 22, 2008]

§ 44.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 44.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 9436, 73 FR 78457, Dec. 22, 2008; 74 FR 5106, Jan. 29, 2009]

§ 44.6696-1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax on wagers under sections 4401 or 4411, the rules under § 1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78457, Dec. 22, 2008]

§ 44.7262-1 Failure to pay special tax.

Any person liable for the special tax who does any act which makes him liable for such tax, without having paid the tax, is, besides being liable for the

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tax, subject to a fine of not less than \$1,000 and not more than \$5,000.

§ 44.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78457, Dec. 22, 2008]

PART 46—EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM

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46.4371-2 Imposition of tax on policies issued by foreign insurers; scope of tax.

46.4371-3 Rate and computation of tax.

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46.4374-1 Liability for tax.

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46.4701-1 Tax on issuer of registration-required obligation not in registered form.

AUTHORITY: 26 U.S.C. 7805.

SOURCE: T.D. 8497, 25 FR 6461, May 6, 1960, unless otherwise noted.

Subpart A—Introduction

§ 46.0-1 Introduction.

The regulations in this part 46 relate to the taxes on policies issued by foreign insurers imposed by chapter 34 of the Internal Revenue Code and the tax on the issuer of registration-required obligations not issued in registered form imposed by chapter 39 of the Internal Revenue Code. See part 40 of this chapter for regulations relating to returns, payments, and deposits of taxes imposed by chapters 34 and 39.

[T.D. 8442, 57 FR 48185, Oct. 22, 1992]

Internal Revenue Service, Treasury

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§ 46.0-2 General definitions and use of terms.

As used in the regulations in this part, unless otherwise expressly indicated:

(a) The terms defined in the provisions of law contained in the regulations in this part shall have the meanings so assigned to them.

(b) The Internal Revenue Code of 1954 means the Act approved August 16, 1954 (68A Stat.), entitled "An Act to revise the internal revenue laws of the United States", as amended.

(c) District director means the district director of internal revenue. The term also includes the Director of International Operations in all cases where the authority to perform the functions which may be performed by a district director has been delegated to the Director of International Operations.

(d) Calendar quarter means a period of 3 calendar months ending on March 31, June 30, September 30, or December 31.

Subpart B—Tax on Policies Issued by Foreign Insurers

§ 46.4371-1 Applicability of subpart.

The provisions of this subpart apply only to premiums paid on or after January 1, 1966. See Subpart H, Part 47 of this chapter for provisions relating to premiums paid or charged before January 1, 1966. If any portion of the tax imposed by section 4371 was paid on the basis of the premium charged before January 1, 1966, in accordance with the provisions of § 47.4371-2 of this chapter (documentary stamp tax), then, to the extent that such portion was paid by stamp, no further tax is due under the provisions of this subpart.

§ 46.4371-2 Imposition of tax on policies issued by foreign insurers; scope of tax.

(a) *Certain insurance policies, and indemnity, fidelity, or surety bonds.* Section 4371(1) imposes a tax upon each policy of insurance (other than those referred to in paragraph (b) of this section), upon each indemnity, fidelity, or surety bond, or upon each certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other in-

strument by whatever name called, whereby a contract of insurance or an obligation in the nature of an indemnity, fidelity, or surety bond is made, continued, or renewed, if issued:

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as insurer (unless the policy or other instrument is signed or countersigned by an officer or agent of the insurer in a State, Territory, or the District of Columbia in which the insurer is authorized to do business); and either

(2) To or for, or in the name of, a domestic corporation, domestic partnership, or an individual resident of the United States, against or with respect to hazards, risks, losses, or liabilities wholly or partly within the United States; or

(3) To or for, or in the name of, a foreign corporation, foreign partnership, or nonresident individual, engaged in a trade or business within the United States with respect to hazards, risks, or liabilities wholly within the United States.

For definition of the term "indemnity bond," see section 4372(c).

(b) *Life insurance, sickness, and accident policies, and annuity contracts.* Unless the insurer is subject to tax under section 819, section 4371(2) imposes a tax upon each policy of insurance or annuity contract, or upon each certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called, whereby a contract of insurance or an annuity contract is made, continued, or renewed, if issued:

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as insurer (unless the policy or other instrument is signed or countersigned by an officer or agent of the insurer in a State, Territory, or the District of Columbia in which such insurer is authorized to do business); and

(2) To any person with respect to the life or hazards to the person of a citizen or resident of the United States.

(c) *Reinsurance.* Section 4371(3) imposes a tax upon each policy of reinsurance, certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever

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name called, whereby a contract of reinsurance is made, continued, or renewed, if issued:

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as reinsurer (unless the policy or other instrument is signed or countersigned by an officer or agent of the reinsurer in a State, Territory, or the District of Columbia in which such reinsurer is authorized to do business); and

(2) To any person against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts of the type described in section 4371 (1) or (2).

(d) *Exempt indemnity bonds.* The tax imposed by section 4371 does not apply to any indemnity bond described in section 4373(2).

§ 46.4371-3 Rate and computation of tax.

(a) *Rate of tax.* (1) The tax under section 4371(1) is imposed at the rate of 4 cents on each dollar, or fractional part thereof, of the premium payment.

(2) The tax under section 4371 (2) and (3) is imposed at the rate of 1 cent on each dollar, or fractional part thereof, of the premium payment.

(b) *Meaning of premium payment.* For purposes of this subpart, the term “premium payment” means the consideration paid for assuming and carrying the risk or obligation, and includes any additional assessment or charge paid under the contract, whether payable in one sum or installments.

§ 46.4371-4 Records required with respect to foreign insurance policies.

(a) Each person required under the provisions of § 46.4374-1 to remit the tax imposed by section 4371 shall keep or cause to be kept accurate records of all policies or other instruments subject to such tax upon which premiums have been paid. Such records must identify each such policy or other instrument in such a manner as to clearly establish the following: (1) The gross premium paid; (2) whether such policy or other instrument is (i) a policy of casualty insurance or an indemnity bond subject to tax under section 4371(1), (ii) a policy of life, sickness, or accident insurance or an annuity contract sub-

ject to tax under section 4371(2), or (iii) a policy of reinsurance subject to tax under section 4371(3); (3) the identity of the insured (as defined in section 4372(d)); (4) the identity of the foreign insurer or reinsurer (as defined in section 4372(a)); and (5) the total premium charged and, if the premium is to be paid in installments, the amount and anniversary date of each such installment.

(b) The records required under the provisions of this section must be kept on file at the place of business or at some other convenient location, for a period of at least 3 years from the date any part of the tax became due or the date any part of the tax is paid, whichever is later, in such manner as to be readily accessible to authorized internal revenue officers or employees. The person having control or possession of a policy or other instrument subject to tax under section 4371 shall retain such policy or other instrument for at least 3 years from the date any part of the tax with respect to such policy was paid.

[T.D. 7023, 35 FR 1012, Jan. 24, 1970. Redesignated by T.D. 8328, 56 FR 189, Jan. 3, 1991, as amended by T.D. 8442, 57 FR 48186, Oct. 22, 1992]

§ 46.4374-1 Liability for tax.

(a) *In general.* Any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, shall be liable for the tax imposed by section 4371. For purposes of this section, in the case of a reinsurance policy that is subject to the tax imposed by section 4371(3), other than assumption reinsurance, the insured person on the underlying insurance policy, the risk of which is covered in whole or in part by such reinsurance policy, shall not constitute a person for whose use or benefit the reinsurance policy is made, signed, issued, or sold.

(b) *When liability for tax attaches.* The liability for the tax imposed by section 4371 shall attach at the time the premium payment is transferred to the foreign insurer or reinsurer (including transfers to any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any

nonresident agent, solicitor, or broker. A person required to pay tax under this section may remit such tax before the time the tax attaches if he keeps records consistent with such practice.

(c) *Payment of tax.* The tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

(d) *Penalty for failure to pay tax.* Any person who fails to comply with the requirements of this section with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of tax. (See section 7270.)

(e) *Effective date.* This section is applicable for premiums paid on or after November 27, 2002.

[T.D. 9024, 67 FR 70846, Nov. 27, 2002]

Subpart C—Excise Tax on Obligations Not in Registered Form

§ 46.4701-1 Tax on issuer of registration-required obligation not in registered form.

(a) *In general.* Section 4701 imposes a tax (determined under paragraph (c) of this section) on any person (referred to as the issuer) who issues an obligation that—

(1) Is a registration-required obligation, and

(2) Is not issued in registered form.

(b) *Definitions—(1) Person.* The term “person” includes all governmental entities.

(2) *Obligation.* The term “obligation” includes bonds debentures, notes, certificates and other evidences of indebtedness regardless of how denominated.

(3) *Registration-required obligation.* The term “registration-required obligation” has the same meaning as when used in section 163(f) (and the regulations thereunder) which relates to the

denial of a deduction for interest on certain obligations not in registered form. However, the term “registration-required obligation” does not include any obligation which would otherwise be exempt from Federal income tax under section 103(a) or any other provision of law.

(4) *Registered form.* The term “registered form” has the same meaning as when used in section 103(j) (and the regulations thereunder) which relates to obligations which must be in registered form to be tax-exempt.

(5) *Issuer.* Except as provided in § 1.163-5T(d) (relating to pass-through certificates) and § 1.163-5T(e) (relating to REMICs), the “issuer” is the person whose interest deduction would be disallowed solely by reason of section 163(f)(1).

(6) *Date of Issuance.* (i) For obligations intended to be offered to the public, the term “date of issuance” means the date the obligation is first sold to the public at the issue price.

(ii) For an obligation which is privately placed, the term “date of issuance” is the date the obligation is first sold by the issuer.

(7) *Issue price.* See section 1273 (b) and the regulations thereunder for the definition of “issue price”.

(c) *Rate and computation of tax.* The tax under section 4701(a) is imposed in an amount equal to the product of—

(1) 1 percent of the principal amount of the obligation, multiplied by

(2) The number of calendar years (or portions thereof) during the period beginning on the date of issuance of the obligation and ending on the date of maturity.

For purposes of this paragraph, the term “principal amount” for a discounted obligation is the issue price, and for all other obligations, including obligations sold at a premium, the term “principal amount” is the stated redemption price at maturity.

(d) *Payment of tax.* Every person who incurs liability for the tax imposed by section 4701 is required to file a return in accordance with section 6011 and § 46.6011(a)-1 relating to the general requirement of a return, statement or list.

(e) *Effective date.* The provisions of this section shall apply to obligations

issued after December 31, 1982, unless issued on the exercise of a warrant or the conversion of a convertible obligation if the warrant or obligation was offered or sold outside the United States without registration under the Securities Act of 1933 and was issued before August 10, 1982. See section 310(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.

[T.D. 8102, 51 FR 33594, Sept. 22, 1986; 51 FR 36392, Oct. 10, 1986, as amended by T.D. 8300, 55 FR 19627, May 10, 1990]

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

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